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July 16, 1999

7/16/99

BY FACSIMILE TRANSMISSION AND U.S. MAIL

Vincent S. Oleszkiewicz, Esq.
Baker & McKenzie
One Prudential Plaza
30 E. Randolph Drive
Chicago, IL 60601

**Re: Lindsay Light II Site
Right-of-Way Agreement**

Dear Vince:

Enclosed please find a copy of the City of Chicago's most recent draft of a "Right-of-Way Agreement" for the Lindsay Light II site reflecting our discussion at the June 22, 1999 meeting. I have underlined new or modified language in the draft agreement. If you can provide me with your e-mail address, I will send you an electronic version of the enclosed draft.

Also, I would like to revisit the language in the agreement regarding the nature and location of contamination, and determine whether there is any new information regarding site or right-of-way conditions that should be referenced in the agreement.

Please contact me at 312-744-6904 at your earliest convenience to discuss this matter.

Sincerely,

Mort P. Ames
Assistant Corporation Counsel

encl.

cc.: Naren Prasad, Chicago DOE
Mary Fulghum, USEPA

NEIGHBORHOODS



DRAFT

July 16, 1999

Site PIN _____

316 E. ILLINOIS STREET RIGHT-OF-WAY AGREEMENT

This Right-of-Way Agreement ("Agreement") is entered into this _____ day of _____, 1999 by and among River East, L.L.C. ("River East") and Kerr-McGee Chemical L.L.C. ("Kerr-McGee"), together referred to herein as the Potentially Responsible Parties ("PRPs"), and the City of Chicago ("City"), as follows:

1. This Agreement is not binding on the City until it is executed by a duly authorized representative of the City. Prior to its execution, this Agreement constitutes an offer by the PRPs. The duly authorized representatives of the PRPs have signed this Agreement, and this Agreement is binding upon them, their successors and assigns, upon execution by the City.
2. The PRPs stipulate:
 - a. The Site is located at 316 E. Illinois Street, Chicago, Illinois ("the Site"). River East is the current owner of the Site. The Site is, and has been for multiple decades, used as an asphalt-paved parking lot. The Site is bounded by Grand Avenue, McClurg Court, Illinois Street and Columbus Drive, and is legally described in Attachment ____.
 - b. On June 3, 1993, the United States Environmental Protection Agency ("USEPA") and the Illinois Department of Nuclear Safety ("IDNS") conducted a joint investigation at the Site and verified the presence of radioactivity below the asphalt surface of the Site at levels above natural background. USEPA determined that the use of the Site as a parking lot posed a negligible risk to the public.
 - c. A historical search determined that in the 1920s and 1930s a company known as the Lindsay Light Company leased the Site for the processing of thorium ores. Lindsay Light is a predecessor of Kerr-McGee. An ingredient in gas mantel manufacturing is thorium extracted from sand and formed into a solution into which mantels were dipped during the manufacturing process. It is believed that Section 11(e)(2) material, 42 U.S.C. §2014(e)(2) ("Thorium Residuals"), from this processing process is found at and around the Site.
 - d. On January 27, 1994, the Chicago Dock and Canal Trust ("Chicago Dock") (a predecessor to River East) entered into an Administrative Order by Consent ("AOC") with USEPA to investigate and study the extent of Thorium Residuals at the Site. The study was completed in May, 1994. A final report concerning the

extent of contamination was delivered to USEPA on October 17, 1995, and the study was approved by USEPA on March 13, 1996. The final report concluded, inter alia, that there was twelve subsurface areas at the Site which exhibited elevated gamma radiation levels. The AOC is attached as Attachment ____.

- e. On June 6, 1996, the USEPA issued a Unilateral Administrative Order ("UAO") to Chicago Dock and Kerr-McGee directing that a removal action be conducted at the Site pursuant to Section 106(a) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §9606(a). The UAO established criteria (the "Cleanup Criteria") for Thorium Residuals of 7.1 picoCuries per gram total radium - 5 picoCuries per gram total radium above background. The UAO is Attachment ____.
- f. Pursuant to the UAO and with approval of USEPA, Chicago Dock and Kerr-McGee conducted and completed a removal action at the Site. This remediation took several months during CY1996 and 1997 and involved the removal and disposal of soils from the Site.
- g. During the removal action, testing along Illinois Street and Columbus Drive revealed minor deposits of Thorium Residuals which could not be readily excavated. Information regarding the known location of this contamination was provided to the City during a meeting on June 26, 1997, and in subsequent correspondence dated July 14, 1997. Attachment ____, depicts the portions of Illinois Street and Columbus Drive that are the subject of this Agreement. Presently, no data indicates that contamination exists under Grand Avenue and McClurg Court. However, the shielding effects of the asphalt, soil, and concrete may make any radiation undetectable from the surface. If subsequent sampling and analysis indicates the presence of contaminants associated with Thorium Residuals beneath Grand Avenue and McClurg Court adjacent to the Site, then those areas shall be subject to and covered by this Agreement, in addition to those portions of Illinois Street and Columbus Drive depicted in Attachment _____. In that event, supplemental exhibits depicting the portion(s) of the right-of-way beneath Grand Avenue and McClurg Court in which contaminants associated with Thorium Residuals are present shall be attached to this Agreement and recorded pursuant to ¶4(b) of this Agreement within ____ days after such sampling and analysis is complete.
- h. Attached as Attachment ____ is a site map showing the known area of the impacted soil in the right-of-way and the relative concentrations of the Thorium Residuals, where, at the time of this Agreement, are located Thorium Residuals established by USEPA in the UAO.

3. The City stipulates that it holds the rights-of-way adjacent to the Site in trust for the public and has jurisdiction over the rights-of-way.
4. The parties stipulate that:
 - a. This Agreement is intended to meet the requirements of the United States Environmental Protection Agency regarding Thorium Residuals.
 - b. This Agreement shall be recorded by the PRPs at their expense with the Cook County Recorder of Deeds on the property described in Attachment ____ (the rights-of-way(s) adjacent to the Site that are subject to this Agreement). Within thirty (30) days of such recording with the Cook County Recorder of Deeds, the Owner/Operator shall provide the City a copy of the Agreement that has been stamped by the Cook County Recorder of Deeds to indicate that it has been recorded with that office.
 - c. This Agreement shall be null and void should the United States Environmental Protection Agency not approve it.
5. The City agrees that it will limit access to soil as described herein under portions of the rights-of-way described in Attachment ____ and in any supplemental exhibits as provided in ¶2(g) that exceed USEPA Cleanup Criteria, as provided in Code Section 10-20-100, subject to the following conditions:
 - a. Where the pavement in the right-of-way is to be considered an engineered barrier to gamma radiation emanating from Thorium Residuals, the PRPs agree to reimburse the City for maintenance activities requested by the PRPs. The City does not agree to maintain the rights-of-way, nor does it guarantee that the rights-of-way will continue as a roadway or that the rights-of-way will always be maintained as an engineered barrier.
 - b. This agreement does not in any way limit the City's authority to construct, reconstruct, repair or maintain and operate rights-of-way upon the property identified in Attachment ____ or other portions of the rights-of-way beneath Grand Avenue and McClurg Court adjacent to the Site subsequently identified as containing contaminants associated with Thorium Residuals or to allow others to use the rights-of-way. To that extent, the City reserves the right to identify, investigate, and remove soil contaminated with Thorium Residuals above the Cleanup Criteria from the rights-of-way identified in Attachment ____ or from other portions of the rights-of-way beneath Grand Avenue and McClurg Court adjacent to the Site subsequently identified as containing contaminants associated with Thorium Residuals and to dispose of them in accordance with applicable environmental regulations so as to avoid causing a further release of the

contaminants and to protect human health and the environment. The PRPs shall reimburse the reasonable actual costs incurred by the City or its contractors or agents in so identifying, investigating, removing, storing, handling or disposing of soil contaminated with Thorium Residuals above the Cleanup Criteria, and it shall not be a defense for the PRPs that those costs were not consistent with or required by United States Environmental Protection Agency regulations, guidelines or policies. Prior to incurring any such costs, the City shall first give the PRPs thirty days notice, unless there is an urgent reason otherwise, to remove or dispose of soil contaminated with Thorium Residuals above the Cleanup Criteria to the extent necessary for the City's work. USEPA shall also be forwarded a copy of this notice. Failure to give this opportunity to the PRPs shall not be a defense to a claim for reimbursement or that the work should not have been done. There is a rebuttable presumption that and Thorium Residuals found in the portions of the rights-of-way described in Attachment ___ or in other portions of the rights-of-way beneath Grand Avenue and McClurg Court adjacent to the Site subsequently identified as containing contaminants associated with Thorium Residuals arose from the release of Thorium Residuals from the Site. Should the PRPs not reimburse the costs identified here, this Agreement shall be null and void in addition to such other remedies as may be available to the City by law.

6. The PRPs agree to indemnify and hold harmless the City, its agents and employees, and contractors, for all obligations asserted against or costs incurred by them associated with the release of contaminants associated with Thorium Residuals.
7. Violation of the terms of this Agreement by the PRPs, or their successor(s) in interest, may be grounds for voidance of this Agreement as a Right-of-Way Agreement.
8. No violation of a permit by a third party shall constitute a breach of this Agreement by the City. The PRPs also agree that their personnel, if any, at the Site will exercise due diligence in notifying those accessing contaminated soil in the rights-of-way of their rights and responsibilities under this Agreement.
9. Should the City breach this Agreement, the PRPs' sole remedy is for an action for damages in the Circuit Court of Cook County. Any and all claims for damages against the City, its agents, contractors, employees or its successors in interest arising at any time are limited to an aggregate maximum of \$20,000.00. No other breach by the City, its agents, contractors, employees or its successors in interest, of a provision of this Agreement is actionable in either law or equity by the PRPs against the City or them and the PRPs hereby release the City, its agents, contractors, employees and its successors in interest for any cause of action it may have against them, other than as allowed in this paragraph, arising under this Agreement or environmental laws, regulations or common law governing contaminated soil in the rights-of-way. Should the City convey, vacate or transfer jurisdiction of the rights-of-way, the PRPs may pursue an action under this

Agreement against the successors in interest, other than the City, or any of its departments, or State agency, in a Court of Law.

10. This Agreement (including attachments, addendums, and amendments) shall run with the land and shall be binding upon the PRPs, and their assigns, successors in interest, successor entities, and any and all persons or entities who subsequently acquire any interest in the Site and/or become successors in title to the Site. PRP's, and any such successor in title shall, at least 15 days prior to conveyance of any interest in real property at the Site, give written notice and a copy of this Agreement to the transferee, and written notice of the proposed conveyance to the USEPA and the City. The notice to the USEPA and the City shall include the name and address of transferee.
11. The City will limit access to the Site and rights-of-way as follows:
 - a. Normal Access: The City will limit access to the Site and rights-of-way via the City Department of Transportation ("CDOT"), or its successor entity. Pursuant to §§ 10-20-100 and 10-20-150 of the Municipal Code of Chicago, a permit must be issued by CDOT to any party, including the City, requesting to perform subsurface work in a City right-of-way. CDOT maintains and will maintain a permit database which, in conjunction with the City Department of Environment ("DOE"), tracks City rights-of-way with reported subsurface contamination. CDOT will consult the database whenever a party requests such a permit. The CDOT permit database will indicate the reported contamination under Columbus Drive and Illinois Street adjacent to the Site, and it will indicate that radiation surveillance must be performed before and during excavations performed on other areas under Grand Avenue and McClurg Court adjacent to the Site subsequently identified as containing contaminants associated with Thorium Residuals through sampling and analysis. The CDOT database will direct the permit applicant to DOE to obtain detailed information on the nature and extent of the contamination and of the radiation surveillance requirements for any excavation near other areas under Grand Avenue and McClurg Court adjacent to the Site subsequently identified as containing contaminants associated with Thorium Residuals. After the permit applicant consults with DOE, the applicant must complete a form where the applicant acknowledges that it is aware of the contamination, will take appropriate steps to ensure the health and safety of people working at the site and rights-of-way, and agrees to follow the health and safety plan for Thorium Residuals for this Site and adjacent rights-of-way ("Health and Safety Plan"), attached as Attachment ___, or other plan reviewed by USEPA that provides equal or greater health and safety protections. DOE will provide written notice to River East and USEPA when permit applicants consult with DOE about the known contamination and the radiation surveillance requirements.

- b. **Emergency Access:** The City Board of Underground ("BOU"), the City Department of Buildings, and the Chicago Fire Department, or their successor entities, will be notified of the contamination at this Site and adjacent rights-of-way and will be forwarded copies of all available environmental data regarding this Site and the adjacent rights-of-way, including the Health and Safety Plan. BOU will provide this information to all utilities in the area. In the event of an emergency that occurs outside of CDOT business hours, this will enable utilities to provide their personnel with the appropriate Site information to ensure that proper health and safety precautions are taken.
12. If any provision of this Agreement is determined to exceed the authority of the City, or if any provision of this Agreement is declared null and void or unenforceable by any court or tribunal having jurisdiction, then this Agreement shall be null and void. If this Agreement is declared null and void, the information about the contamination will remain in the CDOT database and all permit applicants will be required to consult with DOE as described above. Similarly, the Emergency Access procedures described above will remain in force if the Agreement is declared null and void.
13. This Agreement shall continue in effect from the date of the Agreement until the Thorium Residuals in the soil are subsequently reduced through active remediation to levels approved by USEPA, such that unrestricted access to the rights-of-way identified in Attachment ____ or other portions of the right-of-way beneath Grand Avenue and McClurg Court adjacent to the Site subsequently identified as containing contaminants associated with Thorium Residuals is demonstrated to be appropriate and there is no longer a need for this Agreement, and USEPA has, upon written request to the USEPA and notice to the City, provided a written determination authorizing unencumbered access to the rights-of-way.

IN WITNESS WHEREOF, the City of Chicago has caused this Agreement to be signed by its duly authorized representative:

BY: _____

Date: _____

IN WITNESS WHEREOF, River East, L.L.C. has caused this Agreement to be signed by its duly authorized representative:

BY: _____

Date: _____

IN WITNESS WHEREOF, Kerr-McGee Chemical L.L.C. has caused this Agreement to be signed by its duly authorized representative:

BY: _____

Date: _____

Revised: July 16, 1999